

Message Text

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ACTION EB-07

INFO OCT-01 ARA-06 ISO-00 FEA-01 ERDA-05 AID-05 CEA-01

CIAE-00 CIEP-01 COME-00 DODE-00 FPC-01 H-02 INR-07

INT-05 L-03 NSAE-00 NSC-05 OMB-01 PM-04 USIA-06

SAM-01 OES-06 SP-02 SS-15 STR-04 TRSE-00 ACDA-07

OPIC-03 /099 W

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R 162100Z SEP 76

FM AMEMBASSY CARACAS

TO SECSTATE WASHDC 4779

C O N F I D E N T I A L CARACAS 11144

E.O. 11652: N/A

TAGS: EINV, ENRG, VE

SUBJECT: COMPTROLLER GENERAL'S BACK TAX CLAIM

REF: STATE 226716

SUMMARY. LOCAL REPRESENTATIVES OF U.S. OIL COMPANIES CONCERNED ABOUT BACK TAX PROBLEM BUT NOT ALARMED TO POINT OF REQUESTING DIRECT U.S.G. INVOLVEMENT. CLAIM APPARENTLY WILL BE APPEALED WITHOUT PRIOR PAYMENT OR POSTING OF BOND. AMBASSADOR WILL CALL ON MINISTER OF MINES TO SEEK HIS FURTHER ASSESSMENT OF CASE. END SUMMARY.

1. COMPTROLLER GENERAL'S BACK TAX CLAIM DISCUSSED AT LENGTH DURING LUNCHEON HOSTED BY AMBASSADOR SEPTEMBER 10 FOR REPRESENTATIVES OF U.S. OIL COMPANIES IN VENEZUELA. AS OF THAT DATE, NO U.S. COMPANY OTHER THAN EXXON HAD RECEIVED NOTICE FROM COMPTROLLER REJECTING PROTEST. NONE OF THOSE PRESENT, INCLUDING EXXON SERVICES PRESIDENT MARTIN KING, OFFERED EXPLANATION FOR THIS. CVP APPARENTLY HAS NOT YET RECEIVED NOTICE, BUT
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COMPTROLLER REPORTEDLY IS IN PROCESS OF PRESENTING

NOTICE TO SHELL AND IS EXPECTED TO NOTIFY OTHER COMPANIES IN NEXT FEW DAYS. NOTICE RECEIVED BY EXXON DID NOT HAVE TAX BILL ATTACHED, AND SOME DOUBT EXISTS WHETHER COMPTROLLER HAS AUTHORITY TO ISSUE SUCH A BILL. U.S. COMPANIES IN AGREEMENT THAT ON RECEIPT OF NOTICE, THEY THEN ARE REQUIRED TO TAKE NEXT STEP.

2. COMPANY ATTORNEYS REPORTEDLY DIVIDED AS TO PROPER PROCEDURE FOR APPEAL ONCE NOTICE RECEIVED. ONE VIEW, STRONGLY SUPPORTED BY EXXON AND SHELL, HOLDS THAT APPEAL SHOULD BE MADE UNDER JANUARY 1975 LAW ESTABLISHING COMPTROLLER'S AUTHORITY. THIS PERMITS COMPANIES TO APPEAL TO ADMINISTRATIVE COURT WITHIN 45 DAYS OF RECEIPT, WITH NO REQUIREMENT FOR PRIOR PAYMENT OR BOND. APPEAL COULD THEN BE CONTINUED UP THROUGH COURT SYSTEM WITHOUT BOND.

3. OPOSING VIEW, HELD BY ATTORNEYS FOR GULF AND SOME OTHER COMPANIES, IS THAT PROPER COURSE IS TOO APPEAL UNDER TAX LAW. THIS REQUIRES APPEAL BE MADE WITHIN 15 DAYS TO TAX COURT AND THAT PRIOR PAYMENT BE MADE OR BOND POSTED. THEY ARGUE THAT APPEAL UNDER COMPTROLLER'S LAW LIKELY TO BE RULED IMPROPER PROCEDURE BY ADMINISTRATIVE COURT AND SUBSEQUENT APPEALS AND FINAL DECISION WILL BE MADE ON PROCEDURAL RATHER THAN SUBSTANTIVE GROUNDS. THIS VIEW THUS HOLDS THAT CASE WILL BE LOST FROM THE START.

4. REGARDLESS OF LEGAL MERITS, FEW IF ANY COMPANIES EXPECTED TO USE TAX COURT PROCEDURE, SINCE IT REQUIRES ADVANCE COMMITMENT OF ADDITIONAL FUNDS, WHICH MOST COMPANIES SAY THEY ARE UNWILLING TO DO. AT SEPTEMBER 10 MEETING, KING DESCRIBED EXXON'S INTENDED COURSE OF ACTION AND EXPRESSED OPINION THAT CASE WOULD EVENTUALLY REACH SUPREME COURT. HE DID NOT REFER TO OPPOSING LEGAL VIEW, WHICH WE ONLY LEARNED OF LATER, AND IT WAS NOT RAISED BY OTHERS. KING ALSO NOTED THAT RELEASE OF REMAINDER OF GUARANTEE FUND MIGHT BE DELAYED UNTIL ALL OUTSTANDING CLAIMS, INCLUDING BACK TAXES, ARE SETTLED, BUT MAJOR CONCERN OF EXXON AND OTHER COMPANIES CLEARLY CONTINUES TO BE QUESTION OF COMMITMENT OF ADDITIONAL

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FUNDS. COMPANIES DID NOT REQUEST ANY FORM OF DIRECT U.S.G. ASSISTANCE AT MEETING, ALTHOUGH ON OTHER OCCASIONS SOME REPRESENTATIVES HAVE SUGGESTED THAT EMBASSY OFFICERS, INCLUDING AMBASSADOR, MAKE KNOWN SERIOUSNESS OF BACK TAX ISSUE IN COURSE OF NORMAL DISCUSSIONS WITH GOV.

5. EMBASSY FULLY AGREES THAT COURT DECISION LIKELY TO BE DECISIVELY INFLUENCED BY POLITICAL FACTORS. AT

LEAST TWO MAJOR POLITICAL CONSIDERATIONS INVOLVED. FIRST, NATURE OF CLAIM ITSELF, I.E. CLAIM MADE BY INDEPENDENT WATCHDOG AUTHORITY AGAINST LARGE FOREIGN OIL COMPANIES, MAKES IT EXTREMELY DIFFICULT POLITICALLY FOR GOV TO OPPOSE CLAIM PUBLICLY. ON THE OTHER HAND, PULLOUT BY MAJOR COMPANIES, WHICH IS LIKELY TO RESULT IF THEY ARE REQUIRED TO PAY CLAIM OR POST BOND, WOULD UNDERMINE SUCCESSFUL OPERATION OF NATIONALIZED OIL INDUSTRY, THE MAJOR ACHIEVEMENT OF THE PEREZ ADMINISTRATION. THUS, WE BELIEVE GOV WILL BE UNWILLING OPENLY TO OPPOSE CLAIM BUT MAY SEEK SOME INDIRECT MEANS OF FINESSING THE ISSUE. COMPANIES ALSO WELL AWARE OF POLITICAL CONSIDERATIONS, AND HAVE READY ACCESS TO GOV AT SUFFICIENTLY HIGH LEVELS TO MAKE KNOWN CONSEQUENCES OF ADVERSE DECISION.

6. AMBASSADOR IS SEEKING APPOINTMENT WITH MINISTRY OF MINES HERNANDEZ TO ASSESS GOV VIEWS. DURING AMBASSADOR'S PREVIOUS CALL IN EARLY AUGUST, HERNANDEZ HAD RAISED ISSUE BUT SAID IT WAS NO LONGER A PROBLEM. HERNANDEZ, WHO WAS GOV'S CHIEF NEGOTIATOR IN OIL NATIONALIZATION, IS WELL AWARE OF POSSIBLE CONSEQUENCES TO INDUSTRY OF BACK TAX CASE. HE ALSO IS HIGHLY REGARDED AND TRUSTED BY U.S. OIL COMPANIES. ON BASIS OF THIS MEETING, WE EXPECT TO BE BETTER ABLE TO ADVISE WHAT, IF ANYTHING, U.S. CAN USEFULLY DO AT THIS POINT.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: CLAIMS, PETROLEUM PRODUCTION, TAXES
Control Number: n/a
Copy: SINGLE
Draft Date: 16 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: blochd0
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976CARACA11144
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: DG ALTERED
Executive Order: GS
Errors: N/A
Film Number: D760351-0282
From: CARACAS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760955/aaaabumr.tel
Line Count: 142
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 STATE 226716
Review Action: RELEASED, APPROVED
Review Authority: blochd0
Review Comment: n/a
Review Content Flags:
Review Date: 21 JUL 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <21 JUL 2004 by ShawDG>; APPROVED <02 NOV 2004 by blochd0>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COMPTROLLER GENERAL'S BACK TAX CLAIM
TAGS: EINV, ENRG, VE
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006